

News from Ed Markey

United States Congress

Massachusetts Seventh District

FOR IMMEDIATE RELEASE

May 24, 2002

CONTACT: Israel Klein or Mark Bayer

(202) 225-2836

MARKEY QUESTIONS SEC ON PROTECTIONS FOR "AIDING AND ABETTING" INVESTOR FRAUD

RESPONSIBILITY FOR FRAUD SHOULD BE SHARED BY ENABLERS

WASHINGTON, D.C. --

Representative Ed Markey (D-MA), a senior member of the House Energy and Commerce Committee, today called upon the Securities and Exchange Commission (SEC) to support eliminating the current exemption from legal liability in private litigation currently afforded to accounting firms, investment banks and other professional services companies when they assist their clients in perpetrating a securities fraud. Protections against so-called "aiding and abetting" liability are particularly damaging to private plaintiffs in cases such as the pending Enron litigation, where the parties are unable to recover losses from the primary violator due to a bankruptcy and also are prevented from suing those who enabled the fraud because of protections against aiding and abetting liability.

"It is unconscionable that the securities laws may be shielding the companies and individuals who reaped millions of dollars from Enron's shady dealings from lawsuits brought by retirees and others who lost their life savings when Enron collapsed."

Rep. Markey explained, "When accounting firms, investment banks, law firms and other professional services firms help their clients commit securities fraud, the SEC can hold them accountable. However, the SEC's resources and personnel are limited, and the Commission simply cannot bring cases against aiders and abettors in every meritorious case. Therefore, the ability of private parties to sue aiders and abettors is a critical tool – especially when the primary fraudster becomes insolvent – and it must be restored," Rep. Markey said.

Protections against aiding and abetting liability were established by the 1994 Supreme Court decision in *Central Bank of Denver N.A. v. First Interstate Bank of Denver*. Rep. Markey long has advocated adoption of legislation to overturn this decision, and he has introduced H.R. 3617, the Accountability for Accountants Act, which contains a provision that restores aiding and abetting liability, effectively overturning the *Central Bank* decision.

"In the current Enron case, the companies that profited handsomely by providing Enron the expertise it needed to perpetrate its colossal fraud now are using *Central Bank* as a security blanket to ward off suits from defrauded investors. I was encouraged by the comments of SEC Chairman Pitt when he pledged earlier this month to investigate the need to change the securities laws to restore aiding and abetting liability for private suits. In my letter today, I called on Chairman Pitt to follow through on his pledge and support efforts to give investors the means they need to pursue those who help enable securities fraud. I will continue to work to restore this important investor tool, and I urge the SEC to join in this important effort," Rep. Markey said.

For copies of all correspondence on this matter, visit Rep. Markey's web site at:
http://www.house.gov/markey/iss_finance.htm

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